

**PT 05-44**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

**CAPITOL RETIREMENT VILLAGE**  
**Applicant**

**v.**

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**A.H. Docket # 04-PT-0067**  
**P. I. # 14-29-326-036**  
**14-29-178-028**  
**Docket # 03-84-126**

**Barbara S. Rowe**  
**Administrative Law Judge**

**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. George Logan, Special Assistant Attorney General, for the Illinois Department of Revenue (hereinafter referred to as the "Department")

**Synopsis:**

The hearing in this matter was held to determine whether Sangamon County Parcel Index Nos. 14-29-326-036 and 14-29-178-028 qualified for exemption during the 2003 assessment year.

Mr. David C. Plake, III, Business Administrator of the Calvary Temple Christian Center, managing agent of Capitol Retirement Village (hereinafter referred to as the "Applicant"), was present and testified on behalf of Applicant.

The issues in this matter include, first, whether Applicant was the owner of the parcels during the 2003 assessment year; secondly, whether Applicant is a charitable §202 housing organization under the National Housing Act of the United States Department of Housing and

Urban Development (hereinafter referred to as “HUD”); and lastly, whether the parcels were used by Applicant or whether Applicant was in the process of adapting said parcels for exempt charitable purposes during the 2003 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied for the 2003 assessment year. In support thereof, I make the following findings of fact and conclusions of law in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

**FINDINGS OF FACT:**

1. The jurisdiction and position of the Department that Sangamon County Parcel Index Nos. 14-29-326-036 and 14-29-178-028 did not qualify for a property tax exemption for the 2003 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 7)

2. The Department received the application for exemption of the subject parcels from the Sangamon County Board of Review. The Board recommended granting a partial year exemption from November 25, 2003 through the end of the year. The Department denied the requested exemption finding that the applicant had failed to provide:

- A copy of the financial statement or annual report, that shows income and expenses for 2003.
- A copy of all leases or rental agreements that will be used by the organization, including any addendum concerning reduction or waiver of rent.
- A copy of your 501(c)(2) or 501 (c)(3) exemption issued to you by the Internal Revenue Service
- A copy of Form PTAX-301-C, Property Tax Exemption Certificate, we issued or other proof of exemption

eligibility for any other property exempted to your organization.

- A detailed list of all steps taken toward construction during 2003. Be specific and list dates. Submit copies of dated architectural drawings, signed contracts with contractors, building permits, copies of dated paid invoices, etc. as to the construction process. (Dept. Ex. No. 1)

3. The Department stipulated that:<sup>1</sup>

1. On November 26, 2003, Applicant, Capitol Retirement Village, Inc., filed an Application for Property Tax Exemption with the Sangamon County Board of Review for property commonly known as 500 N. Bruns Lane, Springfield, Illinois.
2. The Illinois Department of Revenue denied the claim for exemption in a notice dated September 2, 2004, which stated that the denial was for failure of Applicant to provide additional information requested by the Department.
3. On October 25, 2004, Applicant filed with the Department a request for hearing on the denial of exemption.
4. Since the date of the request for hearing, Applicant has provided additional information, as requested by the Department, that establishes to the satisfaction of the Department (1) that Applicant was the owner of the property during the assessment year, (2) that Applicant is an exempt organization under paragraph (3) of section 501(c) of the Internal Revenue Code, (3) that the facility was qualified, built, or financed under section 202 of the National Housing Act of 1959, and (4) that Applicant had in its corporate bylaws on November 23, 2003, an acceptable policy of non-eviction for failure to pay rent or fees for those unable to do so and now has a practice in place that would adequately communicate this policy to current and prospective tenants.
5. Based upon this additional information, the Department hereby stipulates that it will not object to the grant of the exemption based upon either its prior claims of (1) Applicant's insufficient proof of ownership of the property

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<sup>1</sup> Verbatim recitations from the document.

or (2) Applicant's insufficient proof of compliance with the requirements of section 15-65(c)(ii) of the Property Tax Code, relating to section 202 property, for the current year.

6. The Department's sole remaining objection to the grant of exemption for the property in question is the absence of proof that Applicant was sufficiently in the process of adapting the property for an exempt use in 2003, the assessment year, to qualify for exemption under the holding in *Weslin Properties, Inc. v. Department of Revenue*, 155 Ill.App.3d 945 (2d Dist. 1987). (Dept. Ex. No. 2)

4. On November 24, 2003 a "Project Job Card" was issued to the Applicant under Permit Number BP-2003-2624 for a new multi-family residence to be used as a 60 Unit Senior Living Center. Check number 23009 dated Tuesday November 25, 2003, issued by the general contractor for the Applicant in the amount of \$6,790.20, paid the cost of the permit in full. (Applicant's Ex. No. 2; Tr. p. 10)

5. The architectural plans for the three story-retirement housing complex on the 3.338 acres at issue are dated January 28, 2003 and reference HUD No. 072 EE141/IL06-S011-003. The building will contain 60 apartments, four of which are handicap accessible. Fifty-nine are one-bedroom residential apartments and the remaining two-bedroom apartment is for an on-site manager. The HUD number is used on the rest of the HUD documents submitted. (Applicant's Ex. No. 1; Tr. p. 8-9)

6. On November 26, 2003, Applicant and its contractor executed a HUD "Capital Advance Program-**Construction Contract-Lump Sum** For use under Section 202 of the Housing Act of 1959 or Section 811 of the National Affordable Housing Act." According to the contract, "[T]he work to be performed under this Contract shall be commenced within 10 days of the agreement and completed by November 26, 2004." (Applicant's Ex. No. 2)

7. On November 26, 2003, Applicant executed a HUD “Capital Advance Program **Mortgage Note**” in the amount of \$5,151,500 promising to pay to the order of the Secretary of HUD that amount by the maturity date of December 1, 2044. (Applicant’s Ex. No. 2)

8. “Architect’s Field Report” number two for the project, dated January 15, 2004, estimated that 2% of the work of the project was completed. In the “Observation” section of the report it was noted that the site had been staked, the fence along the north edge of the site had been removed to facilitate access and a storm sewer pipe and two manholes were installed. The “Work in Progress” section states that operators are moving dirt from the retention pond area and redistributing it throughout the site. (Applicant’s Ex. No. 2; Tr. p. 11)

9. Additional “Architect’s Field Reports” detail work progressing and by December 20, 2004, 92% of the work had been completed.<sup>2</sup> (Applicant’s Ex. No. 2; Tr. p. 11)

10. A “Requisition for Disbursement of Funds” on a HUD form itemizes: “Architects fees” of \$275,535; “Contractor’s Performance Bond Premium” - \$27,000; “Building Permit” - \$6,790; “Legal” - \$15,000; “Title & Recording” - \$9,000; “Real Estate Tax Escrow” - \$40,000; “Developer’s Fee – Consultant fee” - \$56,250; “Developer’s Fee – Organizational” - \$2,245; “Developer’s Fee – Other fees” - \$25,528 and “Excess proceeds available (prepaid land & rezoning)” - \$166,971 was submitted by the Applicant to HUD on October 31, 2003<sup>3</sup> for disbursements from the capitol advance proceeds. The “Certificate of Approval (for HUD Use Only)” in the amount of \$624,319 was signed by an authorized HUD official on November 6, 2003. (Applicant’s Ex. No. 2)

11. A “Requisition for Disbursement of Funds” on a HUD form itemizes: “Construction per Form HUD-92448” - \$68,012 and “Insurance (Builder’s Risk and Liability)

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<sup>2</sup> Field Reports 1, 6, 21, 27, and any reports beyond 29 were not part of the exhibit.

<sup>3</sup> No amount was listed in the “Construction per form HUD 92448” category.

\$12,000 in the ‘Insurance’ category and \$3,019 from ‘Developer’s Fee – Additional Insurance’” for \$15,019 - for a total of \$83,031, was submitted by Applicant to HUD on February 19, 2004.<sup>4</sup> The “Certificate of Approval (for HUD Use Only)” in that amount was signed by an authorized HUD official on March 8, 2004. (Applicant’s Ex. No. 2)

12. Additional “Requisitions for Disbursement of Funds” were approved from April 15, 2004 through March 30, 2005 for a total disbursement of \$4,686,755 from Applicant’s capital advance proceeds. The categories of funds for the requisitions dated March 17, 2004 through February 8, 2005 were: “Construction per Form HUD-92448”; “Architect’s fees”; “Insurance”; “Developer’s Fees”; and “Owner’s Fees”. (Applicant’s Ex. No. 2; Tr. p. 11)

13. The Building and Zoning Department, Springfield Illinois issued a “Certificate of Occupancy” on February 4, 2005 for Applicant’s senior living center on the subject property. An “AIA Document G704-200 Certificate of Substantial Completion” was executed between the Applicant, architect and contractor on February 8, 2005. Until Applicant received the certificate it was unable to rent portions of the facility. (Applicant’s Ex. No. 2; Tr. p. 12)

14. On February 10, 2005 a ribbon cutting ceremony was held on the subject property. By April 25, 2005, nineteen tenants occupying 18 rooms resided in Applicant’s retirement complex. Applicant has 20 people on its waiting processing list preparing to move in once the paperwork is completed. (Applicant’s Ex. No. 2; Tr. p. 12)

15. Applicant was unable to give a definite date when groundbreaking or any sort of construction began. (Tr. pp. 14-15)

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<sup>4</sup> The signature line was dated 2/19/03 but the disclosure line had a date of disbursement of March 15, 2004. As the approval date is March 8, 2004, and all of the requisition documents are in chronological order, it is reasonable to assume that this requisition request should have been dated 2004. None of the supporting invoices and/or receipts were in evidence.

## **CONCLUSIONS OF LAW:**

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill. 2d 484 (1992)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit: . . .

(c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code<sup>5</sup> or its successor, and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based upon an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or (ii) the home or facility is qualified, built or financed under Section 202 of the National Housing Act of 1959 as amended.<sup>6</sup>

As the Department has stipulated that its sole remaining objection to the grant of exemption is the question of adaptation of the property for exempt use in 2003, that is the issue I address.

In the case of Weslin Properties, Inc. v. Department of Revenue, 157 Ill. App. 3d 580 (2<sup>nd</sup> Dist. 1987) the Appellate Court held that a portion of property which was under development

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<sup>5</sup> 26 U.S.C.A. §501

<sup>6</sup> 12 U.S.C.A § 701 q.

and adaptation for exempt use qualified for exemption. In that case, Weslin Properties purchased a 24.3-acre tract on May 26, 1983 to be developed into an Urgent Care Center, hospital, and related medical facilities. During 1983, Weslin Properties approved a site plan and hired an architect. Physical adaptation of the property had commenced in the form of landscaping and the construction of berms. “A berm is defined as ‘the dirt shoulder alongside a road.’” *Id.* at 585 In 1984, construction of the Urgent Care facility began. In 1985, the Urgent Care Center was completed and occupied. The court held that the Urgent Care facility qualified for exemption during 1983, but that the remainder of the parcel did not as there had not been sufficient adaptation and development for use of the remainder of said parcel during 1983. The court in Weslin Properties Inc. noted that the parcel was to be used as a medical campus, which was a complex and costly undertaking, requiring several years to be completed. The land alone cost \$2,197,000.

The stipulation in this matter does not establish when, in 2003, the Applicant acquired the property. Applicant testified that work began in December but could not specify a date. (Tr. p. 15) and did not place into evidence Architect’s Field Report number one. Architect’s Field Report number two was dated January 15, 2004 and estimated that 2% of the work had been completed. The site had been staked, the fence along the north edge of the site had been moved and a storm sewer pipe and two manholes were installed. Although the testimony was that the digging of a retention pond takes at least one month, the January 15<sup>th</sup> document just establishes that operators were in the process of moving the dirt for the pond. There is nothing in the record to indicate when the retention pond was started or completed.

In addition, the first Requisition for Disbursement of Funds requesting fees for construction from HUD for the project on the subject property was submitted on February 19,



2004 and approved on March 8, 2004. Therefore, there is no evidence of payments requested or made for construction on the subject property prior to that date.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill. 2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill. 2d 272 (1967)

Applicant has admitted that it is unable to give a definite date when groundbreaking took place on the subject parcels and no documentary evidence establishes that construction took place on the property in 2003. Applicant has not met its burden of proving that it is entitled to an exemption for any portion of 2003. It is therefore recommended that Sangamon County Parcel Index Nos. 14-29-326-036 and 14-29-178-028 remain on the tax rolls for the 2003 assessment year.

Barbara S. Rowe  
Administrative Law Judge  
December 14, 2005